

EXHIBIT 9 TO
STATEMENT OF FACTS

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451 ON THE DATE INDICATED BELOW

By Shaun M. ScottDATE 10/13/04

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SEXY HAIR CONCEPTS, LLC,

Opposer,

v.

V SECRET CATALOGUE, INC.,

Applicant.

Opposition No. 125,739

(SO SEXY)

**SUBSTITUTE NOTICE OF RELIANCE ON
APPLICANT'S RESPONSES TO OPPOSER'S REQUEST FOR ADMISSIONS**

Opposer hereby substitutes this Notice for the Notice of Reliance dated September 14, 2004, and attaches all exhibits, including those which were inadvertently not attached to the Notice of Reliance of September 14, 2004.

Pursuant to T.B.M.P. §§704.01 and 37 C.F.R. §2.120(j), Opposer hereby gives notice that it intends to rely on the following

1. The answers, as supplemented, provided by Applicant in response to requests 1, 3, 4(a)-(h), 8(a)-(h), 9(a)-(h), 10(a)-(h), 11-17, 18(b)-(h), 19, 20(b)-(h) and 21-24 of Opposer's First Requests for Admissions. Exhibit A attached hereto contains the referenced requests and responses.

2. The answers, as supplemented, provided by Applicant in response to requests 28-29, and 32-34 of Opposer's Second Requests for Admissions. Exhibit B attached hereto contains the referenced requests and responses.

3. The answers, as supplemented, provided by Applicant in response to requests 30-31 of Opposer's Revised Second Requests for Admissions. Exhibit C attached hereto contains the referenced requests and responses

4. The answers, as supplemented, provided by Applicant in response to requests 35-37 and 40-44 of Opposer's Third Requests for Admissions. Exhibit D attached hereto contains the referenced requests and responses.

5. The answers, as supplemented, provided by Applicant in response to requests 53-55 of Opposer's Sixth Requests for Admissions. Exhibit E attached hereto contains the referenced requests and responses.

Respectfully submitted,

Dated: 10/13/04

By: Jay K. Meadway

Roberta Jacobs-Meadway

Jay K. Meadway

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

1735 Market Street – 51st Floor

Philadelphia, PA 19103

(215) 665-8500

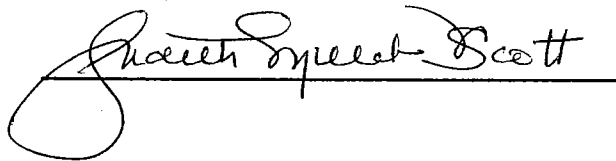
ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Supplement to Notice of Reliance on Applicant's Responses To Opposer's Requests For Admissions filed with U.S. Trademark Trial and Appeal Board was served on counsel for the Applicant on the date listed below via overnight mail delivery:

Frank J. Colucci, Esquire
Colucci & Umans
Manhattan Tower
101 East 52nd Street
New York, NY 10022

Dated: 10/13, 2004

A handwritten signature in cursive script, reading "Shant Syreeta Scott", is written over a horizontal line.

RJM/cs

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SEXY HAIR CONCEPTS, LLC, :
 :
Opposer, : Opposition No.
 :
v. : 125,739
 :
V SECRET CATALOGUE, INC., :
 :
Applicant. :

**APPLICANT'S RESPONSE TO OPPOSER'S
FIRST REQUEST FOR ADMISSIONS**

Applicant, V Secret Catalogue, Inc., by its attorneys, Colucci & Umans, hereby responds to opposer's request for admissions as follows.

General Objections

Applicant objects to opposer's requirement that if Applicant should deny any matter, it must state the ground for the denial, as being outside the scope of Rule 36 of the Federal Rules of Civil Procedure and/or Trademark Rule 2.120.

Applicant further objects to opposer's statement of the alleged consequences of a hypothetical failure by Applicant to admit the truth of any matter which opposer later proves to be true, as being inapplicable in inter partes proceedings before the Trademark Trial and Appeal Board to the extent that while the Board may award sanctions pursuant to Trademark Rule 2.120 (g), it will not award any expenses, including any attorney's fees, to any party.

Responses

1. Applicant has not made any sales of hair care products under Applicant's Mark.

Admit.

2. Applicant does not sell hair care products under Applicant's Mark.

Admit.

3. Applicant does not advertise hair care products

under Applicant's Mark.

Admit.

4. Applicant has not created, or had created for it, product formulations for the following products under Applicant's Mark:

- | | |
|--------------------------|--------|
| (a) hair conditioner | Deny. |
| (b) hair dyes | Admit. |
| (c) hair glitter | Admit. |
| (d) hair highlighter | Admit. |
| (e) hair mascara | Admit. |
| (f) hair pomade | Admit. |
| (g) hair rinses | Admit. |
| (h) hair removing creams | Admit. |
| (i) hair shampoo | Deny. |
| (j) hair spray | Deny. |
| (k) hair straightener | Deny. |
| (l) hair styling gel | Deny. |
| (m) hair styling mousse | Deny. |

5. Applicant has not designed, or had designed for it, product labels bearing Applicant's Mark for use in association with:

- (a) hair conditioner
- (b) hair dyes
- (c) hair glitter
- (d) hair highlighter
- (e) hair mascara
- (f) hair pomade

- (g) hair rinses
- (h) hair removing creams
- (i) hair shampoo
- (j) hair spray
- (k) hair straightener
- (l) hair styling gel
- (m) hair styling mousse.

Objection: Applicant objects to the term "product labels" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" or "packaging" for the products. In the case of Applicant's products in this proceeding, the "container" or the "packaging" and the labelling are not separate items; they are one and the same.

Response: Without waiving the foregoing objection, see responses to Request No. 8, infra.

6. Applicant has not created, or had created for it, product labels bearing Applicant's Mark for:

- (a) hair conditioner
- (b) hair dyes
- (c) hair glitter
- (d) hair highlighter
- (e) hair mascara
- (f) hair pomade
- (g) hair rinses
- (h) hair removing creams
- (i) hair shampoo
- (j) hair spray
- (k) hair straightener

- (l) hair styling gel
- (m) hair styling mousse.

Objection: Applicant objects to the term "product labels" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" or "packaging" for the products. In the case of Applicant's products in this proceeding, the "container" or the "packaging" and the labelling are not separate items; they are one and the same.

Response: Without waiving the foregoing objection, see responses to Request No. 9, infra.

7. Applicant has not approved labels bearing Applicant's Mark for:

- (a) hair conditioner
- (b) hair dyes
- (c) hair glitter
- (d) hair highlighter
- (e) hair mascara
- (f) hair pomade
- (g) hair rinses
- (h) hair removing creams
- (i) hair shampoo
- (j) hair spray
- (k) hair straightener
- (l) hair styling gel
- (m) hair styling mousse.

Objection: Applicant objects to the term "product labels" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" or "packaging" for the products. In the case of Applicant's products in this proceeding, the "container" or the "packaging" and the labelling are not separate items; they are one and the same.

Response: Without waiving the foregoing objection, see responses to Request No. 10, infra.

8. Applicant has not designed, or had designed for it, packaging for the following products under Applicant's Mark:

Objection: Applicant objects to the term "packaging" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" for the products. In the case of Applicant's products in this proceeding, the "packaging" and the "container" for the products are not separate items; they are one and the same. There is no other "packaging".

Response: Without waiving the foregoing objection, and considering "packaging" to be the same as "container" for purposes of this Request, Applicant responds as follows:

- | | |
|--------------------------|--------|
| (a) hair conditioner | Deny. |
| (b) hair dyes | Admit. |
| (c) hair glitter | Admit. |
| (d) hair highlighter | Admit. |
| (e) hair mascara | Admit. |
| (f) hair pomade | Admit. |
| (g) hair rinses | Admit. |
| (h) hair removing creams | Admit. |
| (i) hair shampoo | Deny. |
| (j) hair spray | Deny. |
| (k) hair straightener | Deny. |
| (l) hair styling gel | Deny. |
| (m) hair styling mousse | Deny. |

9. Applicant has not created, or had created for it, packaging for the following products under Applicant's Mark:

Objection: Applicant objects to the term "packaging" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" for the products. In the case of Applicant's products

in this proceeding, the "packaging" and the "container" for the products are not separate items; they are one and the same. There is no other "packaging".

Response: Without waiving the foregoing objection, and considering "packaging" to be the same as "container" for purposes of this Request, Applicant responds as follows:

- | | |
|--------------------------|--------|
| (a) hair conditioner | Deny. |
| (b) hair dyes | Admit. |
| (c) hair glitter | Admit. |
| (d) hair highlighter | Admit. |
| (e) hair mascara | Admit. |
| (f) hair pomade | Admit. |
| (g) hair rinses | Admit. |
| (h) hair removing creams | Admit. |
| (i) hair shampoo | Deny. |
| (j) hair spray | Deny. |
| (k) hair straightener | Deny. |
| (l) hair styling gel | Deny. |
| (m) hair styling mousse | Deny. |

10. Applicant has not approved product packaging for the following products under Applicant's Mark:

Objection: Applicant objects to the term "packaging" in the context of Applicant's products as being vague and indefinite in that it suggests something separate and apart from the "container" for the products. In the case of Applicant's products in this proceeding, the "packaging" and the "container" for the products are not separate items; they are one and the same. There is no other "packaging".

Response: Without waiving the foregoing objection, and considering "packaging" to be the same as "container" for purposes of this Request, Applicant responds as follows:

- | | |
|----------------------|-------|
| (a) hair conditioner | Deny. |
|----------------------|-------|

(b)	hair dyes	Admit.
(c)	hair glitter	Admit.
(d)	hair highlighter	Admit.
(e)	hair mascara	Admit.
(f)	hair pomade	Admit.
(g)	hair rinses	Admit.
(h)	hair removing creams	Admit.
(i)	hair shampoo	Deny.
(j)	hair spray	Deny.
(k)	hair straightener	Deny.
(l)	hair styling gel	Deny.
(m)	hair styling mousse	Deny.

11. Applicant has not designed, or had designed for it, promotional material for the following products under Applicant's Mark:

(a)	hair conditioner	Admit.
(b)	hair dyes	Admit.
(c)	hair glitter	Admit.
(d)	hair highlighter	Admit.
(e)	hair mascara	Admit.
(f)	hair pomade	Admit.
(g)	hair rinses	Admit.
(h)	hair removing creams	Admit.
(i)	hair shampoo	Admit.
(j)	hair spray	Admit.
(k)	hair straightener	Admit.
(l)	hair styling gel	Admit.

(m) hair styling mousse. Admit.

12. Applicant has not created, or had created for it, promotional material for the following products under Applicant's Mark:

(a) hair conditioner	Admit.
(b) hair dyes	Admit.
(c) hair glitter	Admit.
(d) hair highlighter	Admit.
(e) hair mascara	Admit.
(f) hair pomade	Admit.
(g) hair rinses	Admit.
(h) hair removing creams	Admit.
(i) hair shampoo	Admit.
(j) hair spray	Admit.
(k) hair straightener	Admit.
(l) hair styling gel	Admit.
(m) hair styling mousse.	Admit.

13. Applicant has not approved promotional material for the following products under Applicant's Mark:

(a) hair conditioner	Admit.
(b) hair dyes	Admit.
(c) hair glitter	Admit.
(d) hair highlighter	Admit.
(e) hair mascara	Admit.
(f) hair pomade	Admit.
(g) hair rinses	Admit.
(h) hair removing creams	Admit.

- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

14. Applicant has not created, nor had created for it, sales literature for the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

15. Applicant has not approved sales literature for the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.

- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

16. Applicant has not created, or had created for it, catalogs showing the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

17. Applicant has not approved catalogs showing the

following products under Applicant's Mark:

- | | | |
|-----|----------------------|--------|
| (a) | hair conditioner | Admit. |
| (b) | hair dyes | Admit. |
| (c) | hair glitter | Admit. |
| (d) | hair highlighter | Admit. |
| (e) | hair mascara | Admit. |
| (f) | hair pomade | Admit. |
| (g) | hair rinses | Admit. |
| (h) | hair removing creams | Admit. |
| (i) | hair shampoo | Admit. |
| (j) | hair spray | Admit. |
| (k) | hair straightener | Admit. |
| (l) | hair styling gel | Admit. |
| (m) | hair styling mousse. | Admit. |

18. Applicant has not conducted, or had conducted for it, product testing for the following products under Applicant's Mark:

- | | | |
|-----|----------------------|--------|
| (a) | hair conditioner | Deny. |
| (b) | hair dyes | Admit. |
| (c) | hair glitter | Admit. |
| (d) | hair highlighter | Admit. |
| (e) | hair mascara | Admit. |
| (f) | hair pomade | Admit. |
| (g) | hair rinses | Admit. |
| (h) | hair removing creams | Admit. |
| (i) | hair shampoo | Deny. |
| (j) | hair spray | Deny. |

- (k) hair straightener Deny.
- (l) hair styling gel Deny.
- (m) hair styling mousse. Deny.

19. Applicant has not conducted, or had conducted for it, commercial manufacture of the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

20. Applicant has not identified a commercial manufacturer for the following products under Applicant's Mark:

- (a) hair conditioner Deny.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.

- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Deny.
- (j) hair spray Deny.
- (k) hair straightener Deny.
- (l) hair styling gel Deny.
- (m) hair styling mousse. Deny.

21. Applicant has not distributed, or had distributed for it, notification to its industry about the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

22. Applicant has not scheduled any advertisements for the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.

- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.
- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

23. Applicant has not entered into any joint promotions for hair care products under Applicant's Mark.

Admit.

24. Applicant has not created, or had created for it, in-store displays for the following products under Applicant's Mark:

- (a) hair conditioner Admit.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Admit.
- (j) hair spray Admit.

- (k) hair straightener Admit.
- (l) hair styling gel Admit.
- (m) hair styling mousse. Admit.

25. Applicant has not determined the actual retail price range for the following products under Applicant's Mark:

Applicant has determined, subject to testing, one of three price ranges: \$7.50, \$8.50 or \$9.50 with respect to (a), (i) - (m).

- (a) hair conditioner Deny.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.
- (f) hair pomade Admit.
- (g) hair rinses Admit.
- (h) hair removing creams Admit.
- (i) hair shampoo Deny.
- (j) hair spray Deny.
- (k) hair straightener Deny.
- (l) hair styling gel Deny.
- (m) hair styling mousse. Deny.

26. Applicant has not identified the trade channels to be employed for the following products under Applicant's Mark:

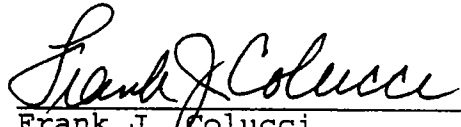
- (a) hair conditioner Deny.
- (b) hair dyes Admit.
- (c) hair glitter Admit.
- (d) hair highlighter Admit.
- (e) hair mascara Admit.

(f) hair pomade	Admit.
(g) hair rinses	Admit.
(h) hair removing creams	Admit.
(i) hair shampoo	Deny.
(j) hair spray	Deny.
(k) hair straightener	Deny.
(l) hair styling gel	Deny.
(m) hair styling mousse.	Deny.

27. Applicant has not directed any announcements to its customers or potential customers about hair care products under Applicant's Mark.

Admit.

Dated: New York, New York
October 28, 2002


Frank J. Colucci
COLUCCI & UMANS
Manhattan Tower
101 East 52nd Street, 16th Fl.
New York, New York 10022
(212) 935-5700
Attorneys for Applicant
V Secret Catalogue, Inc.

CERTIFICATE OF SERVICE

I, Frank J. Colucci, an attorney, certify that a true and correct copy of the foregoing Applicant's Response to Opposer's First Request for Admissions was served on counsel for the Opposer on the date listed below via United States Mail:

Roberta Jacobs-Meadway
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599



Frank J. Colucci

Dated: October 28, 2002